

Nika Aldrich, OSB #160306
Email: naldrich@schwabe.com
SCHWABE, WILLIAMSON & WYATT, P.C.
1420 5th Avenue, Suite 3400
Seattle, WA 98101
Telephone: 206-622-1711
Facsimile: 206-292-0460

*Attorney for Defendant
Cronometer Software, Inc.*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ESHA RESEARCH, INC., now known as
TRUSTWELL,

Plaintiff,

vs.

CRONOMETER SOFTWARE, INC.,
formerly known as **BIGCRUNCH**
CONSULTING, LTD., and **DOES 1-20**,

Defendants.

No. 3:24-cv-01586-AB

**DECLARATION OF AARON DAVIDSON
IN SUPPORT OF CRONOMETER
SOFTWARE, INC.'S MOTION TO
COMPEL**

I, Aaron Davidson, declare as follows:

1. I am the Chief Executive Officer of Defendant Cronometer Software, Inc. ("Cronometer"). I make this declaration based upon my personal knowledge in support of Cronometer's Motion to Compel.

2. I am the founder of Cronometer (formerly "Big Crunch Consulting LLC"), which makes a software app for tracking food and nutrition information. In late 2014, I inquired with ESHA about licensing its food/nutrition databases for

use in the Cronometer app. I was aware of ESHA because I had seen data from ESHA's databases publicly-posted on a different Internet website.

3. Over the next approximately two months, I had regular discussions with Chris Eakin at Trustwell concerning Cronometer's needs and how Cronometer's app works.

4. Attached hereto as Exhibit 1 is a true and accurate copy of an email thread between Chris Eakin and me. This particular thread begins on February 2, 2015. Included is an email wherein I responded to question from Mr. Eakin asking for information about Cronometer. My responses on page 1 have been highlighted for the benefit of the Court.

5. On February 4, 2015, I sent an email to Mr. Eakin showing him how the information was going to be displayed on Cronometer's website, and how attribution would be made to ESHA, similarly to how Cronometer attributes nutrition information to other databases that Cronometer licenses, such as the United States Department of Agriculture ("USDA") and a database acquired from the Canadian government ("CNF"). My email is on the second page of Exhibit 1. I have highlighted a relevant portion of Mr. Eakin's response on page, wherein he says "The attributions you describe will work just fine with us."

6. ESHA's website explained that it maintained three databases: a "branded foods" database, which contains nutrition information for prepackaged food items; a "restaurant" database, which contains nutrition information for popular restaurant items; and a "common foods" database, which contains nutrition information for raw foods, spices, and everyday recipes, which ESHA largely acquired from various government databases.

7. ESHA and I ultimately agreed that Cronometer would acquire only ESHA's branded foods and restaurant databases. At that time, according to Mr.

Eakin, those two databases included nutrition information for approximately 35,000 food items. Attached hereto as Exhibit 2 is a true and accurate copy of an email from Mr. Eakin dated January 13, 2015.

8. ESHA provided the databases on February 13, 2015 as a handful of files in CSV format.¹ “CSV” stands for Comma Separated Values, a common way of saving databases, wherein commas are used to separate each data field. CSV files can be imported into Excel or other common spreadsheet applications.

9. After a reasonable investigation, Cronometer does not appear to have accessible the original database files that were sent from ESHA in 2015. I located the files that were sent in March 2022 and forwarded them to our counsel.

10. Mr. Eakin and I continued to correspond via email after we received the database. For example, on February 24, 2015, Mr. Eakin wrote that ESHA “would like to write a press release about our partnership.” Attached hereto as Exhibit 3 is a true and accurate copy of that email.

11. Later that day, I wrote to Mr. Eakin and sent him a database showing him “the top 500 ESHA food items” that had been searched by Cronometer’s customers on its app. As of that time, nutritional information for 4144 different food items in ESHA’s database had been accessed by Cronometer’s customers—a fact that I shared with Mr. Eakin. A true and accurate copy of that email is attached hereto as Exhibit 4.

12. Attached here to as Exhibit 5 is true and accurate email thread between Mr. Eakin beginning March 19, 2015, concerning ESHA’s request for information about Cronometer for its marketing department, so it could write an

¹ “CSV” stands for Comma Separated Values, a common way of saving databases, wherein commas are used to separate each data field. CSV files can be imported into Excel or other common spreadsheet applications.

“About Cronometer” section.


13. Following the transmission of the databases in February 2015, ESHA sent updated databases on a semi-annual basis, including additional foods. I reasonably estimate that our customers have accessed the nutrition data for approximately 62,000 food items. Approximately 2 million Cronometer users have accessed ESHA database nutritional content for at least one food item since 2015.

14. One of those users was ESHA co-founder, Bob Geltz. A true and accurate email from Mr. Geltz dated February 8, 2019 is attached hereto as Exhibit 6.

15. When we were first contacted last summer about Trustwell’s concerns in this case, we immediately withdrew the ability for its users to choose foods in the ESHA databases, and have since deleted the ESHA databases from Cronometer’s system entirely.

16. However, because much of the information in those databases is publicly available, and because ESHA obtained data from public sources, Cronometer has the exact same information in other databases. For example, Cronometer has the exact same nutritional information about Nature Valley Maple Brown Sugar granola bars from three other databases (NCCDB, FDC UPC, and CRDB). Screenshots showing some of that information are shown respectively below:

☆ Nature Valley, Crunchy Granola Bar, Maple Brown Sugar



Protein: 3.1 g (5.8%)
Net Carbs: 27.2 g (62.2%)
Fat: 6.9 g (32.1%)


80 listed nutrients Data Source: NCCDB

Time of day: 10:43 AM ☒

Diary Group: Breakfast

Serving Size: 42 g

☆ General Mills, Nature Valley, Crunchy Granola Bars, Maple Brown Sugar, Maple Brown Sugar



Protein: 3.0 g (6.3%)
Net Carbs: 27.0 g (60.8%)
Fat: 7.0 g (33.0%)

11 listed nutrients Data Source: FDC UPC

Time of day: 10:43 AM ☒

Diary Group: Breakfast

Serving Size: 1 serving – 42g

☆ Nature Valley, Crunchy Granola Bar, Maple Brown Sugar



Protein: 3.0 g (6.3%)
Net Carbs: 27.0 g (60.7%)
Fat: 7.0 g (33.0%)

9 listed nutrients Data Source: CRDB

Time of day: 10:50 AM ☒

Diary Group: Breakfast

Serving Size: 1 2 bars – 42g

17. The latter entry, from the “CRDB” database, was information that a Cronometer user uploaded to our “Community Resource Data Base” from a submitted product label photograph.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on March 13, 2025, in Revelstoke, British Columbia.



Aaron Davidson